

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Brendon LILLY

Group Art Unit: 2857

Application No.: 10/501,945

Examiner: E. DESTA

Filed: October 12, 2004

Docket No.: 120496

For: PERFORMANCE MONITORING SYSTEM AND METHOD

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Notice of Appeal is filed herewith. Applicant respectfully requests review of the Rejection of December 29, 2005 and the Advisory Action of April 18, 2006, in the above-identified application.

This review is requested because the §103(a) rejection of independent claim 1 over U.S. Patent Application Publication No. 2002/0116156 to Remboski in view of U.S. Patent Application Publication No. 2005/0159851 to Engstrom and the §103(a) rejection of independent claim 16 over Remboski in view of Engstrom and further in view of U.S. Patent No. 6,795,799 to Deb are clearly in error for at least the following reasons.

I. Engstrom Fails to Disclose Calculating a Performance Indicator for at least One Machine Operator

Independent claims 1 and 16 each recite "calculating at least one performance indicator for the at least one machine operator." In the December 29 Final Rejection, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Remboski to include the performance indicator distribution disclosed in Engstrom. In the Request for Reconsideration After Final Rejection, Applicant

Engstrom's pointed out that performance indicator distribution relates only performance of the machine vehicle, and is not used to calculate the performance of the machine operator.

In part 11 of the Advisory Action issued April 18, 2006, the Examiner asserts that Engstrom teaches evaluating the operator and the vehicle and that the disclosure shows "that the performance indicator is both for the operator and to some extent for the machine." This assertion is irrelevant, and fails to address the feature of calculating a performance indicator for the operator from a performance indicator distribution.

Engstrom does appear to teach the use of certain characteristics of the driver, such as eye and/or head movements, which may be indicative of drowsiness or distraction, as input into the system for evaluating and enhancing the machine performance (see paragraph [0056]). However, Engstrom states earlier in paragraph [0056] that this data is used for "the recognition of different road environments or long term environments." Further, the driver data are inputs to the machine performance calculation disclosed by Engstrom. As mere indicators of a physical condition of the driver, they are in no way a calculation of the performance of the machine operator.

II. Engstrom Fails to Disclose Calculating Machine Operator Performance from the "at least one performance indicator distribution"

The Office Action asserts that Fig. 5 of Engstrom discloses a performance indicator distribution. Fig. 5 of Engstrom discloses a plot of normalized vehicle speed versus time. The Examiner has not explained how this plot of vehicle speed versus time is believed to be used by Engstrom for calculating a performance indicator for a machine operator.

III. The Office Action Does Not Establish Adequate Motivation for Combining References

The motivation alleged by the Office Action for combining Remboski and Engstrom is "so that a performance indicator distribution is used ... so as to obtain more extensive data information for improved evaluation purposes." In the Advisory Action, the Examiner simply states "there are a number of citations where Engstrom provides a motivation to meet the

limitation noted in claims 1 and 16." No explanation or citation to specific passages in Engstrom is given.

These statements accordingly do not establish a motivation to combine references. The statements speak in generalities, leaving the reader with little or no idea of what the actual proposed combination would be.

As explained above, Fig. 5 of Engstrom shows a plot of vehicle speed versus time. The associated description (see paragraph 36 of Engstrom) explains that Fig. 5 shows an effect of certain processing, but never suggest that Fig. 5 show a "performance indicator distribution" that is used as an input for calculation of some performance indicator.

Therefore, Fig. 5 of Engstrom is not tied to the alleged motivation of "obtaining more extensive data information for improving evaluation," in any way that is relative to the primary reference of Remboski. Even if it were, this would not change the fact that Engstrom, like Remboski, fails to disclose that a performance indicator distribution is used for calculating a performance indicator of a machine operator.

III. Conclusion

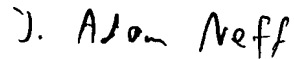
In view of the foregoing, Applicant maintains that all of the pending claims are patentable over the applied prior art, and requests withdrawal of the rejections and allowance of the application.

Should the review panel believe that anything further is desirable to place the application in even better condition for allowance, it is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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JAO:PWO/jth

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